

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

CRYSTAL SHAUNA RONCANCIO

Applicant for Registered Nurse License

Respondent.

Case No. 2012-514

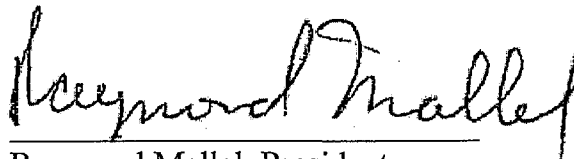
OAH No. 2012080070

DECISION

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on April 12, 2013.

IT IS SO ORDERED this 13th day of March, 2013.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on December 5, 2012, in Oakland, California.

Deputy Attorney General Leslie E. Brast represented complainant Louise R. Bailey, M.Ed., R.N., Executive Officer of the Board of Registered Nursing.

Attorney at Law Ford Greene represented respondent Crystal Shauna Roncancio, who was present.

The matter was submitted for decision on December 5, 2012.

FACTUAL FINDINGS

1. On March 28, 2011, respondent Crystal Shauna Roncancio applied to the Board of Registered Nursing (board) for licensure as a registered nurse by examination. The board denied the application on August 31, 2011, and respondent appealed. On March 21, 2012, complainant Louise R. Bailey, M.Ed., R.N., acting in her then capacity as Interim Executive Officer of the board, issued a statement of issues and this hearing followed.

2. On June 19, 2006, respondent was convicted in the Superior Court of California, County of Marin, on her plea of nolo contendere, of a violation of Vehicle Code section 23224, subdivision (a) (driving a vehicle under the age of 21 with an alcoholic beverage), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for one year.

3. The underlying acts took place on May 22, 2005. A passenger in a vehicle driven by respondent had an open alcoholic beverage. Respondent was 19 years old at the time of the offense.

4. Respondent's conviction was expunged pursuant to Penal Code section 1203.4 by order dated December 12, 2011.

5. In her application for licensure, respondent disclosed to the board that she had "developed a drug habit" prior to her arrest, and that as a consequence of her drug use, she "had become terribly irresponsible."

6. Respondent started using methamphetamine in 2004 while she was in high school. Within months, respondent, who had been an honor student and athlete, dropped out of high school and stopped showing up for her part-time job. Respondent ran away from her family, developed an addiction to the drug, lost her driver's license and eventually became homeless. In her words, the drug "almost destroyed" her life, and respondent was unable to stop using it for years.

7. In the spring of 2006 respondent took her first steps to become clean and to get her life back in order. She took care of her outstanding criminal charge, the conviction set forth in Finding 2. She completed her high school education and obtained a general education degree. She fixed relationships with family members and her friends. With respect to using methamphetamine, she limited her use to the weekends, and she remained with her boyfriend who was also a user. By September she realized that she was in denial about her addiction. She had what she calls an epiphany one day and after a conversation with God, made the decision to completely quit using the drug. Over the next several weeks she stopped all drug use, and disassociated with her drug-using friends, with the exception of the boyfriend.

After five months of maintaining sobriety, respondent had a relapse on her 21st birthday, February 12, 2007. Regret over that decision led her to end the relationship with the boyfriend. Respondent has had no other relapses since that time. She has had no desire to use drugs since that time.

7. In November 2006 respondent obtained employment with Starbucks, a job she held for almost six years. Respondent was a responsible and valued employee at Starbucks.

8. Respondent enrolled at the College of Marin in the summer of 2007. In the fall of 2009 she entered its registered nursing program. Respondent was a stellar student earning a 3.41 grade point average, and an Associate in Science degree in Registered Nursing in May 2011. Three of respondent's instructors in the nursing program testified at hearing, and two instructors wrote letters on her behalf.

Saralyn Lefkowitz, RN, BSN, MPA, is the Assistant Director of the nursing program at College of Marin for the past four years, and a longtime nursing instructor. Lefkowitz was respondent's instructor in four classes, including a skills laboratory where she was a hands-

on mentor. Lefkowitz had all favorable impressions of respondent, both as a student and as a person. She saw no signs or symptoms of substance use by respondent. In her opinion, respondent is trustworthy, honest and ethical, and will make a fine nurse. She supports respondent's licensure.

Sean Edward McNeal, RN, taught respondent in a clinical rotation at Marin General Hospital in the fall of 2010. He also had all favorable impressions of respondent, finding her well-prepared, very competent, comfortable with, and calming to, patients. McNeal did not see any signs or symptoms of substance use by respondent.

Joanna Ruddle, RN, was respondent's instructor in an Advanced Concepts class in cardiovascular and renal systems in spring 2010. Respondent earned a straight A grade in what Ruddle described as a challenging course. Ruddle found respondent to be "hungry for knowledge" and "committed to the subject." Ruddle also did not see any signs or symptoms of substance use by respondent.

Nursing school instructors Diane E. Ridley, RN, and Carmen Carrouche, RN, MSN, APRN, each wrote a letter on behalf of respondent. Each instructor attests to respondent's good character, and to the absence of any evidence of impairment. Each writer recommends respondent's licensure.

9. Ruddle also arranged for respondent's preceptorship in the Burn Unit of St. Francis Memorial Hospital during the spring semester 2011. This is a privileged placement for the nursing school, and it is one that is given to only the strongest of students in the nursing program. Ruddle chose respondent for the placement based on her skill and attitude. No other nursing students from College of Marin were selected.

Doris Yau, R.N., is a Staff Nurse III at St. Francis Memorial Hospital. She has worked for 12 years in the hospital's Burn Unit, and was respondent's preceptor for 120 clinical hours. Yau had all favorable impressions of respondent. Respondent exercised good nursing skills and good judgment, and she interacted and communicated well with patients. Respondent had access to a great deal of narcotics in the Burn Unit. Yau did not see any signs or symptoms of substance use by respondent.

10. Respondent has current certifications as a Healthcare Provider, an ACLS Provider, and a PALS Provider.

11. Since October 2011, respondent has been employed by Buckelew Programs, a nonprofit program which, among other things, operates group homes for the mentally ill. Respondent's current position is as a Personal Care Provider at Draper House, a home for eight adults with pervasive mental illness. Respondent loves her work, and finds it very rewarding. During her employment respondent has completed 14 trainings through Essential Learning.

Katy Spence, LMFT, is the Program Director of Residential Support Services for Buckelew Programs. In a letter dated November 12, 2012, Spence attests to respondent's good character and to her diligence and professionalism as a Personal Care Provider. Spence is aware of respondent's prior drug use and of her criminal record. Spence highly recommends respondent's licensure.

12. Internist Daniel Aaron Smith, M.D., has been respondent's physician for over four years. In a letter dated August 20, 2012, Dr. Smith reports:

You have requested a letter from me in support of your application for a nursing license. Apparently there is an issue because you admitted a past history of drug abuse. You have admitted this to us as well; at your first visit to Kaiser in 2007 it is documented that you were sober for 1 year at that point. There have been no subsequent contacts with our system (ER, urgent care, primary care) which would suggest you were impaired by drugs or alcohol now for over 6 years. From a medical viewpoint, you are as healthy as could be, and I recommend no restrictions on your activities.

13. Respondent also underwent an intake-evaluation and urine analysis drug test at Kaiser's Chemical Dependency Services on August 20, 2012. In a report of that date, Jason A. Jones, Ph.D., reports that the results of the drug test were negative, suggestive of a lack of recent drug usage. He found respondent to be polite and cooperative during the interview, and found "no reason to doubt the accuracy of her reporting." While Dr. Jones found no current evidence of substance misuse, he recommended to respondent that she attend Kaiser's Chemical Dependency Education Series to learn more about the nature of addiction and recovery "as a prophylactic measure to prevent recurrence and relapse."

14. Respondent followed the advice of Dr. Jones and enrolled in the Kaiser Chemical Dependency Education Series in Vallejo. The first eight classes are free, and she has completed five of them. The remaining four classes have an associated fee, and she has not taken them. Respondent no longer has medical insurance through Kaiser, but she wants to complete the Kaiser program when she is financially able to pay its cost.

Respondent started attending Alcoholics Anonymous meetings in the fall of 2012, and she presented documentation of her attendance. She attends when she is able, but she does not work with a sponsor.

15. Maintaining sobriety is respondent's number one priority. After the 2007 relapse, respondent understands how guarded she must be in order to ensure that she never relapses again. Although she quit taking methamphetamine on her own, she has learned about addiction and relapse through the Kaiser Chemical Dependency Education Series and AA meetings she has attended. Attendance at these meetings has helped reinforce her

sobriety, but she does not believe it is necessary for her to attend AA in order to maintain sobriety.

16. Respondent has worked hard to dig herself out of the whole she dug for herself through the use of methamphetamine, and she does not want to return to that life. She requests that the board grant her a probationary license, and she is willing to abstain from all drug and alcohol use, be subject to random testing, and to attend AA meetings, but she does not believe she needs to undergo an intensive recovery program in order to maintain sobriety. She has demonstrated her ability to maintain sobriety for more than five years, during which time she has worked and completed nursing school without relapse. Respondent states that she cannot afford to be off-work for the period of time required by an intensive recovery program.

LEGAL CONCLUSIONS

First Cause for Denial – Conviction of Substantially Related Crime

1. Business and Professions Code sections 480, subdivision (a)(1), and 2761, subdivision (f), provide that the Board may deny a license to an applicant who has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. Pursuant to California Code of Regulations, title 16, section 1444, a conviction shall be considered substantially related “if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.”

Respondent’s 2006 conviction of driving under the age of 21 with an alcoholic beverage is not substantially related to the qualifications, functions, and duties of a registered nurse because it does not evidence, to a substantial degree, “the present or potential unfitness” on the part of respondent to discharge her duties as a registered nurse in a manner consistent with public safety. The evidence established that the alcohol in the vehicle belonged to respondent’s passenger, not her. The evidence does not establish that respondent drank any of the alcohol in connection with driving the vehicle, drove her vehicle while impaired, or otherwise put the public at risk by her conduct. While respondent’s conduct constituted a Vehicle Code violation, her conviction does not provide cause to deny her application pursuant to Business and Professions Code sections 480, subdivision (a)(1) or 2761, subdivision (f).

Second Cause for Denial – Acts if done by a Licentiate

2. Pursuant to Business and Professions Code sections 480, subdivision (a)(3)(A), and 2736, subdivision (b), the Board may deny a license to an applicant who has committed acts which, if done while licensed as a registered nurse, would provide cause for license discipline. Respondent’s use of, and addiction to, methamphetamine (Findings 5 and 6) would constitute unprofessional conduct and would provide cause for license discipline

pursuant to Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (b). Cause therefore exists to deny respondent's application pursuant to Business and Professions Code sections 480, subdivision (a)(3)(A), and 2736, subdivision (b).

Disciplinary Determination

3. By respondent's own admission, she used and became addicted to methamphetamine between 2004 and 2006. She had a single-incident relapse in February 2007. It is respondent's burden to establish that she is sufficiently rehabilitated from her drug use so that it would not be contrary to the public interest to allow her to take the registered nurse examination, and to grant her application for licensure if she is a successful candidate.

Complainant agrees that respondent should be granted a probationary license, but argues that respondent should be made subject to all of the Board's conditions related to substance abuse. These conditions require the licensee to undergo substance abuse treatment and rehabilitation, physical and mental health examinations, submit to biological fluid testing, participate in therapy or counseling, and abstain from the use of alcohol and drugs. Respondent requests that she be permitted to be exempt from some of these requirements, in light of her track record of sobriety since 2006.

In determining the appropriate conditions, public safety is the Board's paramount concern. (Bus. & Prof. Code, § 2708.1.) All things considered, it is concluded that the public will be adequately protected by requiring respondent to comply with all standard terms and conditions, with added requirements of abstaining from the use of alcohol and drugs and undergoing biological fluid testing. Other than the single relapse in February 2007, respondent has modeled exemplary behavior as a citizen, as a nursing student, and as an employee, since becoming sober in 2006. On this record, there is no evidence which would support ordering respondent to complete a physical examination or mental health examination. There is no evidence which would support requiring respondent to participate in a rehabilitation program for chemical dependence more than five years after becoming sober. And, there is no evidence which would support requiring respondent to participate in an on-going counseling program. The following order, with its stated terms and conditions of probation, is sufficient to protect the public.

ORDER

The application of respondent Crystal Shauna Roncancio for licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements. The license shall immediately be revoked, but the order of revocation shall be stayed and respondent placed on probation for a period of three (3) years on the following conditions:

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JAN - 8 2013

Each condition of probation is separate and distinct. If any condition of this order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this order, and all other applications thereof, shall not be affected. Each condition of this order shall separately be valid and enforceable to the fullest extent permitted by law.

- (1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within 72 hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of this decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

- (2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

- (3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.
- (4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse.

Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

- (5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verifications of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

- (6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

For purposes of compliance with this section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probationary period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

- (7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

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BOARD OF REGISTERED NURSING
JAN - 8 2013

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care-related employment.

In addition to the above, respondent shall notify the Board in writing within 72 hours after she obtains any nursing or other health care-related employment. Respondent shall notify the Board in writing within 72 hours after she is terminated or separated, regardless of cause, from any nursing, or other health care-related employment with a full explanation of the circumstances surrounding the termination or separation.

- (8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding her level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least one-half of the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by respondent with or without respondent present.

- (9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board-approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

- (10) COMPLETE A NURSING COURSE(S) - Respondent, at her own expense, shall enroll in a and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above-required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

- (11) VIOLATION OF PROBATION - If respondent violates the conditions of her probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be

extended and shall not expire until the accusation or petition has been acted upon by the Board.

- (12) LICENSE SURRENDER - During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
 - (2) One year for a license surrendered for a mental or physical illness.
- (13) ABSTAIN FROM PSYCHOTROPIC (MOOD-ALTERING) DRUGS: Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood-altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within 14 days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time-limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

- (14) SUBMIT TO TESTS AND SAMPLES: Respondent, at her expense, shall participate in a random, biological fluid testing or drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of her current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

DATED: January 4, 2013

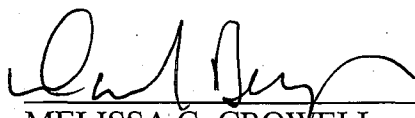

for MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Statement of Issues Case No. 2012-514

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. **2012-514**

12 **CRYSTAL SHAUNA RONCANCIO**
13 **177 Canal St. Apt. 9**
San Rafael, CA 94901

STATEMENT OF ISSUES

14 Applicant/Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant), brings this Statement of Issues solely in
19 her official capacity as the Interim Executive Officer of the Board of Registered Nursing (Board),
20 Department of Consumer Affairs.

21 2. On or about March 28, 2011, the Board received an application for a Registered
22 Nursing License from Crystal Shauna Roncancio (Respondent). On or about January 31, 2011,
23 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
24 representations in the application. The Board denied the application on August 31, 2011.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code (Code) unless
28 otherwise indicated.

1 4. Code section 2736 provides, in pertinent part, that the Board may deny a license when
2 it finds that the applicant has committed any acts constituting grounds for denial of licensure
3 under Code section 480.

4 5. Code section 480 states:

5 “(a) A board may deny a license regulated by this code on the grounds that the applicant
6 has one of the following:

7 “(1) Been convicted of a crime. A conviction within the meaning of this section means a
8 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
9 board is permitted to take following the establishment of a conviction may be taken when the
10 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
11 an order granting probation is made suspending the imposition of sentence, irrespective of a
12 subsequent order under the provisions of Section 1203.4 of the Penal Code.

13 “... .

14 “(3) (A) Done any act that if done by a licentiate of the business or profession in question,
15 would be grounds for suspension or revocation of license.

16 “(B) The board may deny a license pursuant to this subdivision only if the crime or act is
17 substantially related to the qualifications, functions, or duties of the business or profession for
18 which application is made. . .”

19 6. Code section 2761 states:

20 “The board may take disciplinary action against a certified or licensed nurse or deny an
21 application for a certificate or license for any of the following:

22 “(a) Unprofessional conduct . . .

23 “... .

24 “(f) Conviction of a felony or of any offense substantially related to the qualifications,
25 functions, and duties of a registered nurse, in which event the record of the conviction shall be
26 conclusive evidence thereof. . .”

27 7. Code section 2762 states:

28 “In addition to other acts constituting unprofessional conduct within the meaning of this

chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“ ...

“(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license. . .”

8. California Code of Regulations, title 16, section 1444, states in pertinent part:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. . .”

FACTUAL BACKGROUND

9. On or about June 19, 2006, in Marin County Superior Court, Case Number CR141685A, Respondent was convicted of having violated Vehicle Code section 23224(a) (driving under age 21 with an alcoholic beverage in the vehicle). Imposition of sentence was suspended and Respondent was placed on probation for a one year period. The conviction arose from Respondent's arrest on or about May 22, 2005, by Marin County Sheriff after an open alcoholic beverage was found in the car she was driving.

10. In an undated letter to the Board received on or about March 28, 2011, Respondent described having “developed a drug habit” prior to her arrest and reported that, as a result, she “had become terribly irresponsible.”

FIRST CAUSE FOR DENIAL OF APPLICATION

(Substantially Related Conviction)

11. Respondent's application is subject to denial pursuant to Code sections 2736, 480(a)(1) and/or 2761(f), in that she was convicted of a crime substantially related to the qualifications, functions, or duties of a registered nurse, as set forth in paragraph 9, above.

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